That this view is opposed to the whole current of legal authority is conceded, that it is equally in conflict with the views of political economists and many able statesmen cannot be doubted. It will be remembered that President Roosevelt in his last message advocated a federal tax on inheritances, and it seems clear that he considered the right to control the devolution of the property of a deceased person to rest absolutely in the state. It is needless to cite authorities in support of the accepted view and only a few are given: *Magoun* v. *Illinois Trust Co.,* 170 U. S. 283; *State* v. *Hamlin,* 86 Me. 495; *Eyre* v. *Jacob,* 14 Gratt. 422; *Pullen* v. *Commissioners,* 66 N. C. 361; *State* v. *Alstan,* 94 Tenn. 674; *Knowlton* v. *Moore,* 178 U. S. 41; *Plummer* v. *Coler,* 178 U. S. 115.

The law, however, was upheld on the ground that the tax was an excise on the transfer of the property, so the doctrine just discussed is purely obiter. The court seems to feel a keen pleasure in promulgating this theory and indulges a hope that it has blazed the way to better things. We are inclined to think that neither the pleasure nor the hope is justified.

The court also concluded that the Constitution did not confine the legislature to a tax on property nor was the law obnoxious to the constitutional requirement of equality and uniformity. See, also, *Knowlton* v. *Moore, Magoun* v. *Illinois Trust Co., Minot* v. *Winthrop, State* v. *Hamlin, supra, Kochersperger* v. *Drake,* 167 Ill. 122; *State* v. *Guilbert,* 70 Ohio St. 229.

In Pennsylvania the tax is regarded as one on property. *Bittinger's Estate,* 129 Pa. St. 338; *Handley's Estate,* 181 id. 339.

For decisions condemning exemptions and progressive rates, see *State ex rel. Davidson* v. *Gorman,* 40 Minn. 232; *Drew* v. *Tifft,* 79 id. 175; *State* v. *Bazille,* 87 id. 500; *State* v. *Switzler,* 143 Mo. 287; *Fatjo* v. *Pfister,* 117 Cal. 83; *State* v. *Ferris,* 53 Ohio State 314. F. L. S.

THE SOVEREIGN POWER OF A STATE TO PREVENT ELECTION FRAUDS.—A case which has caused widespread and excited discussion in Colorado, and which involves legal questions of great importance, is *People ex rel. Miller, Atty. Gen.,* v. *Tool,* 86 Pac. Rep. 224 (— Col. —), decided late in 1904, but the opinion in which was officially published for the first time August 27, 1906. The case was an original proceeding in the Supreme Court, instituted by the People of the State of Colorado on the relation of the Attorney-General and the Governor. The bill charged that the respondents, the judges of election in many precincts, the fire and police board, the sheriff, members of the Election Commission and others were conspiring to commit at the ensuing election in Denver fraudulent and unlawful acts, such as causing many thousand false and fictitious names to be entered upon the registration lists, the intimidation of the minority election judges and the refusal to allow watchers and challengers of the minority party to be present at the polling places; that similar frauds had been perpetrated by the same parties at previous elections, thus preventing fair elections and defeating the will of the people, and that the consummation of the present plans would have a like result at the impending election. The bill therefore prayed that an injunction issue restraining

respondents from committing the said unlawful acts, commanding them to perform the duties required by law, and that the court appoint two watchers in each of the several precincts, "to observe how the election in those precincts is conducted."

The respondents filed answers which denied the conspiracy charges, claimed that the relief sought was in conflict with section 5 of Art. 2 of the Colorado Constitution, which provides that "all elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage," and challenged the jurisdiction of the court, because, as counsel argued, (1) the questions involved were political and not judicial, (2) a court of equity has no power to enjoin the commission of crimes, and (3) there were adequate remedies at law. The decision of the court granting substantially the relief prayed for, was announced, with JUSTICE STEELE dissenting, when the court consisted of only three members, though before the opinion was filed the court had been enlarged to seven members by a constitutional amendment adopted at the election in question.

The court disposed of the objection made by the respondents that the action prayed for was political, not judicial, by saying: "The action is not to have this court exercise functions which belong to any other department of government, but merely to construe the law relative to the duty of the respondents and the power of the state to execute its laws, and to command obedience to them. The questions presented by the bill are, therefore, purely judicial." This position is amply sustained by authority. *Atty.-Gen.* v. *Barstow,* 4 Wis. 567; *State* v. *Houser,* 122 Wis. 534, 100 N. W. 964; *State ex rel. Lamb* v. *Cunningham,* 83 Wis. 90, 53 N. W. 35, 17 L. R. A. 145. In the last mentioned case it was said by CASSODAY, J.: "We readily perceive that the determination of an action may have a political effect, and in that sense may effect a political object; but that would not necessarily make the question determined a political instead of a judicial question." And in *Marbury* v. *Madison,* 1 Cranch 137, CHIEF JUSTICE MARSHALL said that undoubtedly the proper court could rightfully issue mandamus to compel the secretary of state to deliver to Marbury his commission, which had been made out, signed and sealed by President John Adams and his secretary of state, but which Jefferson and Madison had refused to deliver. And yet it cannot be questioned that this action would have had a "political effect." So in the principal case in commanding the performance by the election and other officers, of purely ministerial duties and in restraining unlawful interference with the performance of these duties, the court was taking action which must necessarily have political effect, yet its action was purely judicial. As to the other principal arguments made by respondents against the issuance of the writ of injunction, the court based its action on the broad ground that the state in its sovereign capacity is intrusted with powers and duties to be exercised for the general welfare, and that in the exercise of these powers "it is not restricted in the remedies it may employ" except as limited by the fundamental law; and that "the interest of the state in a pure election is not limited to the protection which may be afforded by the punishment of those, through criminal prosecutions, who violate the laws relating to elections." The court said further:

"If, then, the state, in order to secure an honest election, should be limited to the prosecution and punishment of those who might be guilty of the frauds charged, the people of this commonwealth are at the mercy of those who have combined to commit these frauds. Government is not such a failure; the state is not so impotent. The result to be accomplished by a proceeding which the state may institute, rather than its character, constitutes the test of its power. It has the right to appeal to this court for a determination and exercise of its powers by an appropriate process, to prevent wrongs which, in its sovereign capacity, it is its duty to prevent. * * * Individuals cannot invoke the power of a court of equity to enjoin these acts, but the state in its sovereign capacity as *parens patriae,* has the right to invoke the power of a court of equity to protect its citizens when they are incompetent to act for themselves. The state is not bound to wait until the object of the illegal combination is effected, which will deprive the people of their liberties and constitutional rights, but may bring an action at once to prevent its consummation; and while the writ of injunction may not be employed to suppress a crime as such, yet when acts, though constituting a crime, will interfere with the liberties, rights and privileges of citizens, the state not only has the right to enjoin the commission of such acts, but it is its duty to do so." This reasoning seems to be in harmony with that of the Supreme Court of the United States in the Debs case, in which MR. JUSTICE BREWER, after reaching the conclusion that the government had, in that case, a property right to protect, said: "We do not care to place our decision upon this ground alone. Every government, entrusted by the very terms of its being, with powers and duties to be exercised and discharged for the general welfare, has a right to apply to its own courts for any proper assistance in the exercise of the one, and the discharge of the other; and it is no sufficient answer to its appeal to one of those courts that it has no pecuniary interest in the matter. The obligations which it is under to promote the interest of all, and to prevent the wrongdoing of one resulting in injury to the general welfare, is often of itself sufficient to give it a standing in court." *In re Debs,* 158 U. S. 564, 15 Sup. Ct. 900. The same doctrine received support in *United States* v. *Bell Telephone Co.,* 128 U. S. 315, 367.

It is undoubtedly true that language may be found in many cases, which lends itself to the view that equity will not interfere with the conduct of elections by the election officers, but it is believed that most of these statements will be found, upon examination, to be mere dicta, or uttered in cases in which the sovereign state was not itself asking relief. Certainly, in the present case, the position of the court seems more in harmony with progressive and adequate views of the functions and powers of the state and with the requirements of an intelligent public policy. H. M. B.

ORIGINAL JURISDICTION OF SUPREME COURT IN ELECTION CASES.—Less than two years after the decision in the *Tool* case, *supra,* the Supreme Court of Colorado had occasion to pass upon the same kind of controversy, from the point of view of procedure, in *People ex rel. Graves* v. *District Court and Frank T. Johnson, Judge,* not yet officially reported. In that case a bill was